

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in compliance with D.N.J. LBR 9004-2(c)

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In re:

ALEJANDRO E. PRESA AND MARIA D.
GUERRA,
Debtors.

FILED
JEANNE A. NAUGHTON, CLERK

SEP 19 2017

U.S. BANKRUPTCY COURT
NEWARK, N.J. DEPUTY

BY Case No. 17-11639 (RG)

Chapter 7 Proceeding

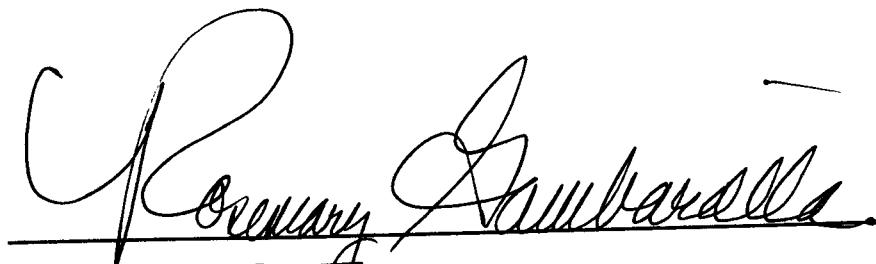
Honorable Rosemary Gambardella, U.S.B.J.

9-19-17
Hearing: July 18, 2017 at 10:00 a.m.

ORDER GRANTING CHAPTER 7 TRUSTEE'S MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. §§ 105, 363 AND 365, AND FED R. BANKR. P. 2002 AND 6004: (I) AUTHORIZING THE SALE OF THE DEBTORS' REAL PROPERTY LOCATED AT 156 CORABELLE AVENUE, LODI, NEW JERSEY 07644, AS IS, WHERE IS, SUBJECT TO ALL ENCUMBRANCES AND LIENS, AND SUBJECT TO HIGHER AND BETTER OFFERS; (II) COMPELLING THE DEBTORS TO REMOVE PERSONAL PROPERTY FROM THE PROPERTY WITHIN TEN (10) BUSINESS DAYS OF ENTRY OF AN ORDER APPROVING THE SALE; AND (IV) WAIVING THE STAY PURSUANT TO FED. R. BANKR. P. 6004(h)

The relief set forth on the following pages numbered two (2) through eight (8) is hereby ORDERED.

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Rosemary Gambardella
USBJ

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Alejandro E. Presa and Maria D. Guerra
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Chapter 7 Trustee's Motion for an Order pursuant to 11 U.S.C. §§ 105, 363 and 365, and Fed. R. Bankr. P. 2002 and 6004: (i) Authorizing the Sale of Certain of the Debtors' Real Property Located at 156 Corabelle Avenue, Lodi, New Jersey 07644, As Is, Where Is, Subject to Encumbrances and Liens and SUBJECT TO HIGHER AND BETTER OFFERS; (ii) Compelling the Debtors to Remove Personal Property from the Property Within Ten (10) Business Days of Entry of an Order Approving the Sale; and (iii) Waiving the Stay Pursuant to Fed. R. Bankr. P. 6004(h)

This matter came before the Court on the motion of Eric R. Perkins, Esq. the Chapter 7 Trustee (the "Trustee") for the bankruptcy estate of the debtors, Alejandro E. Presa and Maria D. Guerra (the "Debtors"), by and through his counsel, McElroy, Deutsch, Mulvaney & Carpenter, LLP, for an Order Pursuant to 11 U.S.C. §§ 105, 363, 365, and Fed. R. Bankr. P. 2002 and 6004; (i) Authorizing the Sale of Certain of the Debtors' Real Property located at 156 Corabelle Avenue, Lodi, New Jersey 07644 (the "Property"), As Is, Where Is, with all faults and defects therein with no warranties of any kind express, implied or otherwise and subject to all liens and encumbrances including but not limited to mortgages, ad valorem taxes, HOA dues, special assessments, restrictions, easements and governmental regulations, SUBJECT TO HIGHER AND BETTER OFFERS; (ii) Compelling the Debtors to Remove Personal Property from the Property Within Ten (10) Business Days of Entry of an Order Approving the Sale; and (iii) Waiving the Stay Pursuant to Fed. R. Bankr. P. 6004(h) (the "Motion"); and, it appearing that: the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); the relief requested in the Motion is in the best interest of creditors and the estate; proper and sufficient notice of this Motion having been given; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing:

Chapter 7 Trustee's Motion for an Order pursuant to 11 U.S.C. §§ 105, 363 and 365, and Fed. R. Bankr. P. 2002 and 6004: (i) Authorizing the Sale of Certain of the Debtors' Real Property Located at 156 Corabelle Avenue, Lodi, New Jersey 07644, As Is, Where Is, Subject to Encumbrances and Liens and SUBJECT TO HIGHER AND BETTER OFFERS; (ii) Compelling the Debtors to Remove Personal Property from the Property Within Ten (10) Business Days of Entry of an Order Approving the Sale; and (iii) Waiving the Stay Pursuant to Fed. R. Bankr. P. 6004(h)

THE COURT HEREBY FINDS AND DETERMINES that:¹

A. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334.

B. As evidenced by the certificate of service filed with the Court and based on representations of counsel at the hearing, if any, (i) properly, timely, adequate and sufficient notice of the Motion and Hearing has been provided in accordance with section 363 of Title 11 of the United States Code (the "Bankruptcy Code") and Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") 2002, 6004, and 9007; (ii) such notice was good, sufficient and appropriate under the particular circumstances; and (iii) no other or further notice of the Motion, Hearing or entry of this Order shall be required.

C. The purchase price constitutes fair consideration and constitutes reasonably equivalent value for the Property.²

D. Chapter Investors LLC (the "Buyers" and collectively with the Trustee, the "Parties") are purchasers in good faith, as that term is used in section 363(m) of the Bankruptcy Code, with respect to the Property. The Purchase and Sale Agreement for the Property (the "Agreement") was negotiated, proposed and entered into by the Parties in good faith, from arms-length bargaining positions and without collusion, and therefore, the Buyers are entitled to the protections of section 363(m) of the Bankruptcy Code with

¹ Findings of fact shall be construed as conclusions of law and conclusions of law as findings of fact where appropriate.

² Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion and/or the Agreement, as applicable.

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Chapter 7 Trustee's Motion for an Order pursuant to 11 U.S.C. §§ 105, 363 and 365, and Fed. R. Bankr. P. 2002 and 6004: (i) Authorizing the Sale of Certain of the Debtors' Real Property Located at 156 Corabelle Avenue, Lodi, New Jersey 07644, As Is, Where Is, Subject to Encumbrances and Liens and SUBJECT TO HIGHER AND BETTER OFFERS; (ii) Compelling the Debtors to Remove Personal Property from the Property Within Ten (10) Business Days of Entry of an Order Approving the Sale; and (iii) Waiving the Stay Pursuant to Fed. R. Bankr. P. 6004(h)

respect to the Property. Neither the Trustee nor the Buyers has engaged in any conduct that would cause or permit the Agreement to be voided.

E. Approval of the Agreement and sale of the Property is in the best interest of the Debtors' creditors and their estate.

F. The Trustee has articulated sound business reasons for consummating the transaction contemplated by the Agreement.

G. Debtors' estate is the lawful owner of the Property, and has good and marketable title to the Property. Accordingly, the transfer of the Property to the Buyers is or will be a legal, valid, and effective transfer of the Property, and will vest the Buyers with all right, title, and interest in and to the Property.

H. Non-debtor parties holding valid Liens and Claims in or with respect to the Property who did not object to the Motion, who withdrew their objections to the Motion and/or whose objections were overruled shall have no further right to object to the sale of the Property.

I. The Trustee has articulated a sound business reason for sale of the Property to Buyers.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. All findings of fact and conclusions of law set forth above are incorporated herein by reference, and the Motion is granted, as provided herein.

2. The Agreement, attached as Exhibit A to the Motion, and the terms set forth therein are fair and reasonable and shall be, and hereby are approved.

Chapter 7 Trustee's Motion for an Order pursuant to 11 U.S.C. §§ 105, 363 and 365, and Fed. R. Bankr. P. 2002 and 6004: (i) Authorizing the Sale of Certain of the Debtors' Real Property Located at 156 Corabelle Avenue, Lodi, New Jersey 07644, As Is, Where Is, Subject to Encumbrances and Liens and SUBJECT TO HIGHER AND BETTER OFFERS; (ii) Compelling the Debtors to Remove Personal Property from the Property Within Ten (10) Business Days of Entry of an Order Approving the Sale; and (iii) Waiving the Stay Pursuant to Fed. R. Bankr. P. 6004(h)

3. The Debtors shall remove all personal property from the Property within ten (10) business days of the entry of this Order. Should the Debtors fail to remove personal property from the Property within this ten (10) day period, the Trustee is hereby authorized to dispose of said property as he sees fit in the exercise of his sound business judgment as Chapter 7 Trustee.

4. All objections to the Motion and the relief requested therein that have not been withdrawn, waived or settled, and all reservations of rights included in such objections, are hereby overruled on the merits and denied and any further unasserted objections are barred.

5. The Agreement and all ancillary documents and transactions contemplated therein, including transfer of the Property to the Buyers as provided in the Agreement are approved and authorized under the Bankruptcy Code, including sections 105, 363, and 365 thereof.

6. The Trustee and the Buyers are authorized and directed to perform their respective obligations under the Agreement when due, and take such other actions as are necessary to execute and perform all obligations referenced in, contemplated by, or otherwise necessary under the Agreement.

7. The Trustee is authorized to sell the Property to the Buyers, pursuant to the terms of the Agreement, on an **AS IS, WHERE IS** basis with all faults and defects therein, with no warranties of any kind, express, implied or otherwise and subject to all

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liens and encumbrances, including but not limited to mortgages, ad valorem taxes, HOA dues, special assessments, restrictions, easements and governmental regulations.

8. Upon closing, the Buyers and their successors and assigns expressly waive any claims against the Debtors, the Debtors' estate, the Trustee, the Trustee's professionals, and/or their successors and assigns related to the Property following the Closing. This release shall not release any obligations of the Trustee, as Trustee of the Debtors' estate contained in the Agreement.

9. The transfer of the Property by the Trustee to the Buyers upon closing will be a valid, legal, and effective transfer of the Property notwithstanding any requirement for approval or consent by any entity (as defined in section 101(15) of the Bankruptcy Code) except as otherwise set forth in the Agreement.

10. Pursuant to section 363(b) of the Bankruptcy Code, the Trustee is hereby authorized to sell and transfer the Property to the Buyers pursuant to and in accordance with the terms and conditions of the Agreement and to take all other actions as necessary to effectuate all of the terms thereof and to consummate the transactions contemplated therein, including, without limitation, such actions as are necessary to execute and deliver all documents referenced in and/or contemplated by the Agreement, without further authorization of the Court.

11. This Order and the Agreement shall be binding upon, and shall inure to the benefit of, the Trustee, the Buyers, and their respective successors and assigns.

12. This Court shall retain exclusive jurisdiction to enforce the provisions of this Order and the Agreement and to resolve any issue or dispute concerning the interpretation, implementation or enforcement of this Order and the Agreement or the rights and duties of the parties hereunder or thereunder.

13. Each and every federal, state, and local governmental agency, recording office or department and all other parties, persons or entities is hereby directed to accept this Order for recordation as conclusive evidence of the transfer of title to the Property conveyed to the Buyers.

14. The Buyers shall be entitled to the protection of section 363(m) of the Bankruptcy Code if this Order or any authorization contained herein is reversed or modified on appeal. The purchase by the Buyers of the Property is a purchase in good faith for fair value within the meaning of section 363(m) of the Bankruptcy Code, and therefore, the Buyers are entitled to the protection of section 363(m) of the Bankruptcy Code. Accordingly, the reversal, modification or appeal of the authorization provided herein to consummate the Agreement and sale of the Property shall not affect the validity of the sale to the Buyers, unless such authorization is duly stayed pending such appeal before the Closing.

15. The sale approved by this Order is not subject to avoidance or imposition of costs and damages pursuant to section 363(n) of the Bankruptcy Code. The consideration set forth in the Agreement to be provided by the Buyers in exchange for the Property shall be deemed to constitute reasonably equivalent value and fair consideration.

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16. The Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of this Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estate.

17. The failure to specifically include any particular provision of the Agreement in this Order shall not diminish or impair the efficacy of any such provision, it being the intent of this Court that the Agreement and each and every provision, term and condition thereof be authorized or approved in their entirety. In the case of an inconsistency between this Order and the Agreement, the Agreement shall control.

18. Nothing herein precludes the rights of the Trustee to file an application to the Court pursuant to section 506(c) of the Bankruptcy Code.

19. As provided by Bankruptcy Rule 6004(h), this Order shall be effective immediately upon its entry, and the sale approved by this Order may close immediately upon its entry, notwithstanding any otherwise applicable waiting periods.